



DOCKET FILE COPY ORIGINAL

GEORGETOWN UNIVERSITY LAW CENTER
INSTITUTE FOR PUBLIC REPRESENTATION

RECEIVED

MAR 24 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Douglas L. Parker
Director
Hope Babcock
Associate Director
Environmental Law Project
Angela J. Campbell
Associate Director
Citizens Communications Center Project
Randi M. Albert
Visiting Professor
Sunil H. Mansukhani
Caroline S. Park
Fellows

March 24, 1999

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Petition for Reconsideration of Order, Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 -- Direct Broadcast Satellite Public Interest Obligations, MM Docket No. 93-25

Dear Ms. Salas:

The Center for Media Education and the parties listed in the footnote below¹ respectfully request that the Secretary exercise her authority under 47 CFR §0.231(i) to rule on extensions of time based on operational problems by extending the filing deadline for Petitions for Reconsideration in the above-captioned proceeding to 4:00 P.M. March 11, 1999 and accepting the Petitioners' Petition for Reconsideration nunc pro tunc, as timely filed. Counsel for CME, et al. was unable to timely submit

¹ The parties are Peggy Charren, American Academy of Child and Adolescent Psychiatry, American Association of School Administrators, American Psychological Association, Association of Independent Video and Filmmakers, Benton Foundation, Center for Science in the Public Interest, Children's Defense Fund, Consumer Federation of America, Mediascope, National Association of Elementary School Principals, National Association of School Psychologists (hereinafter collectively referred to as "CME, et al." or "Petitioners").

CME, et al.'s Petition for Reconsideration as a result of operational problems with the FCC's Electronic Comment Filing System ("ECFS").

The Secretary has the authority to rule on motions for extensions of time based on operational problems under 47 CFR §0.231(i). Ordinarily, these requests should be filed at least seven days before the filing deadline. However, the text of Section 0.231(i) refers to Section 1.46(b) which provides that "[i]n emergency situations, the Commission will consider a late-filed motion for a brief extension of time related to the duration of the emergency and will consider motions for acceptance of . . . filings made after the filing date." Therefore, because the operational problems with the FCC's ECFS constitute a clear emergency, Counsel for CME, et al. asks that the Secretary extend the filing deadline to 4:00 P.M. March 11, 1999.

Counsel for CME, et al. made numerous unsuccessful attempts to timely submit CME, et al.'s Petition for Reconsideration using the Commission's ECFS. Counsel for CME, et al. is an experienced personal computer user who has successfully filed several documents with the FCC using ECFS. Counsel employed seven computers at three different locations² from approximately 5:30 P.M. until 11:00 P.M. on March 10, 1999, but was unable to transmit the document. After repeated attempts to electronically file the Petition on March 10, 1999, we surmised that the FCC was experiencing operational problems because the transmission remained stalled in the "transfer" mode for several hours. Counsel for CME, et al. did not receive any "server error" messages.³

² In addition to filing attempts made at Counsel's office at Georgetown University Law Center, counsel attempted to transmit the Petition upon return to her residence on March 10, 1999 without success.

³ According to Media Access Project's ("MAP's"), Motion for Extension of Time Nunc Pro Tunc Within Which to File a Petition for Reconsideration or for Acceptance of Filing Made after the Filing Date, March 15, 1999 (hereinafter MAP Nunc Pro Tunc Motion), at 3 n.4, "if an

At 9:02 P.M. on March 10, we transmitted the Petition for Reconsideration via E-mail, the option the FCC provides for parties without web access. Unfortunately, this method was also unsuccessful because the FCC's E-mail system had similar operational problems. The computer system at Counsel's office produced an electronic notification verifying the transmission on March 10, 1999. According to these records, Counsel sent the Petition for Reconsideration on March 10, 1999 at 9:02 P.M. and it was received at 9:02 P.M., 9:22 P.M. and 9:26 P.M. at the FCC "firewall."⁴ However, the message could not be delivered. This scenario is analogous to a situation in which Counsel arrives at the FCC's doors, in this case, the firewall, before the regular closing time, only to find the doors locked. The Petition reached this "door" before the filing deadline, but was denied access. Counsel undertook all reasonable efforts to deliver the Petition before the filing deadline.

On March 11, 1999, we learned from attorneys at Media Access Project ("MAP") that they were also unsuccessful in filing electronically between 5:30 P.M. and midnight on March 10, 1999. MAP informed us that Ms. Patricia A. Rawlings of the Office of Public Affairs confirmed that no filings were received after 4:30 P.M. on March 10, 1999.⁵ Unsure about the status of the filing, Counsel for CME, et al. hand-delivered the petition to the FCC before 4:00 P.M. on March 11, 1999.⁶

attempted access is unsuccessful because of operational difficulties caused by the filer's computer or Internet connection, an error message indicating 'server error' is generated.

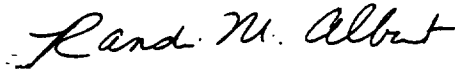
⁴ Notification records indicating that our file was sent on March 10 and was received by E-mail address: firewall-user@internet2.fcc.gov are attached as an Appendix.

⁵ See MAP Nunc Pro Tunc Motion, *supra* note 3, at 4.

⁶ As stated in our March 11, 1999 letter to the Secretary, on that date, Counsel for CME, et al. was aware only that the E-mail had been sent. The Secretary did not check for E-mail receipt of the petition and Counsel did not receive notification that the E-mail transmission was unsuccessful until Friday, March 12, 1999. The only reason that Counsel hand-delivered the document on March 11, was due to concern for the integrity of a document submitted by E-mail.

Based on the circumstances described above, we believe that the Secretary did not receive the timely-filed Petition for Reconsideration because of operational problems on the Commission's ECFS. Thus, Petitioners ask that the Secretary exercise her delegated authority to grant an extension of time nunc pro tunc through and including approximately 4:00 P.M. March 11, 1999 within which to file Petitions for Reconsideration in Docket 93-25. In the alternative, Petitioners ask that the Secretary use her authority to accept the Petition for Reconsideration notwithstanding its submission after the filing deadline and deem that such acceptance be as if the pleading had been timely filed, nunc pro tunc. Petitioner also ask that the Secretary grant all such other relief as may be just and proper.

Sincerely,



Randi M. Albert, Esq.
Jeneba Jalloh, Esq.
Institute for Public Representation
Citizens Communications Center Project
Georgetown University Law Center
600 New Jersey Avenue, Suite 312
Washington, DC 20001
(202) 662-9535

Counsel for CME, et al.

cc: Susan H. Steiman, Office of General Counsel

APPENDIX

(36E7244F.D10 : 12 : 535147)

petition for reconsideration

Wed, Mar 10, 1999 9:02 pm

Jeneba Jalloh

LAWCAMPUS.LAWPOST:JALLOHJ

Date & Time

03/10 9:02 pm

ecfs

Routered

internet:fcc.gov

Date & Time

Wednesday, March 10, 1999 9:02 pm

Options

No

None

Yes

Normal

No

None

No

Normal

Immediate

Delivered & Opened

From: Mail Delivery Subsystem [mailto:ecfs@fccsun05w.fcc.gov]
To: LAWCAMPUS.LAWPOST(JALLOHJ)
Date: Sat, Mar 13, 1999 9:36 pm
Subject: Returned mail: Cannot send message within 3 days

The original message was received at Wed, 10 Mar 1999 21:26:01 -0500 (EST)
from firewall-user@internet2.fcc.gov [165.135.0.253]

----- The following addresses had permanent fatal errors -----
<ecfs@fccsun05w.fcc.gov>

----- Transcript of session follows -----
Message could not be delivered for 3 days
Message will be deleted from queue

----- Original message follows -----

Return-Path: <JALLOHJ@wpgate.law3.georgetown.edu>
Received: from gatekeeper2.fcc.gov by fccsun05w.fcc.gov.fcc.gov (8.9.1/SMI-SVR4)
id VAA03806; Wed, 10 Mar 1999 21:26:01 -0500 (EST)
Received: by gatekeeper2.fcc.gov; id VAA24975; Wed, 10 Mar 1999 21:23:19 -0500 (EST)
Received: from wpgate.law3.georgetown.edu(141.161.16.100) by gatekeeper2.fcc.gov via sm
id xma024960; Wed, 10 Mar 99 21:22:25 -0500
Received: from LAWCAMPUS-Message_Server by wpgate.law3.georgetown.edu
with Novell_GroupWise; Wed, 10 Mar 1999 21:02:58 -0500
Message-Id: <s6e6de02.061@wpgate.law3.georgetown.edu>
X-Mailer: Novell GroupWise 5.2
Date: Wed, 10 Mar 1999 21:02:55 -0500
From: "Jeneba Jalloh" <JALLOHJ@wpgate.law3.georgetown.edu>
To: ecfs@fcc.gov
Subject: petition for reconsideration
Mime-Version: 1.0
Content-Type: text/plain; charset=ISO-8859-1
Content-Transfer-Encoding: quoted-printable
Content-Disposition: inline

<PROCEEDING> 93-25
<DATE> Wednesday, March 10, 1999
<NAME> Center for Media Education, et al.
<ADDRESS1> 600 New Jersey Avenue, Suite 312
<ADDRESS2>=20
<CITY> Washington
<STATE> DC
<ZIP> 20001
<LAW-FIRM> Institute for Public Representation
<ATTORNEY> Randi Albert, Esq., Jeneba Jalloh, Esq.=20
<FILE-NUMBER>=20
<DOCUMENT-TYPE> Reconsideration=20
<CONFIDENTIAL> n
<PHONE-NUMBER> (202) 662-9535
<DESCRIPTION> Petition for Reconsideration
<NOTIFY>jallohj@law.georgetown.edu
<TEXT> BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION